

CHEMCLENE SITE DEFENSE GROUP

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ORIGINAL



SDMS DocID

2225313

April 12, 2001

President
Photofabrication Chem & Equip
522 Lancaster Avenue
Malvern, PA 19355

Re: Photofabrication Chem & Equip
Malvern TCE Superfund Site

Dear Sir or Madam:

I am writing on behalf of the Chemcene Site Defense Group ("Group"). This letter is for settlement purposes, not an admission of liability by any member of the Group, and not admissible against the Group or any member of the Group for any purpose.

The Group consists of twenty-four business entities who have entered into a Consent Decree with the United States regarding the Malvern TCE Superfund Site ("Site") in United States v. Action Manufacturing Co., et al., Civil Action No. 99-CV4402, (E. D. Pa.). A list of members of the Group is attached to this letter as Appendix A.

We write to you because the Group considers Photofabrication Chem & Equip to be a potentially responsible party ("PRP") at the Site under the Comprehensive Environmental Response, Cleanup, and Liability Act ("CERCLA") 42, U.S.C. § 9601 et seq. Specifically, according to available records, Photofabrication Chem & Equip was a generator of at least 7.19 drums (or 55-gallon drum equivalents) of hazardous substances which were disposed of and/or treated at the Site. As such, Photofabrication Chem & Equip is liable for response costs that have been and will be incurred at the Site. This letter offers Photofabrication Chem & Equip the opportunity to resolve its liability now, without incurring substantial litigation costs. However, we must conclude an agreement with you on or before May 31, 2001 in order to settle on the terms proposed by this letter.

Background

To learn more details about the Site, you should of course consult the EPA administrative record. You may also view the web site maintained by EPA at the following address: <http://www.epa.gov/reg3hwmd/super/malvern/menu55.htm>. Briefly, the Site is located at 258

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North Phoenixville Pike in East Whiteland Township, Chester County, Pennsylvania. From approximately 1952 until 1992, Chemclene used the Site to receive, store, reclaim and process industrial cleaning solvents and other wastes that included hazardous substances. It disposed of the byproducts of the reclamation process at the Site, resulting in the release of hazardous substances into the soils and the underlying aquifer.

In January 1997, in response to releases and threatened releases of hazardous substances at the Site, the United States Environmental Protection Agency ("EPA"), in consultation with the Pennsylvania Department of Environmental Protection ("DEP"), began a Remedial Investigation of the Site ("RI") to determine the nature and extent of contamination at the Site. According to data gathered during the RI, various hazardous substances were present in both the soils and groundwater at the Site.

In November 1997, after EPA completed the RI, EPA issued a Record of Decision ("ROD") in which it selected a Remedial Action for the Site. Thereafter, EPA sent notice letters to approximately 372 PRPs, including Photofabrication Chem & Equip, and negotiations followed. A number of the parties each of whose alleged nexus was believed to be de minimis, negotiated a de minimis settlement with EPA.

The members of the Group entered into the Consent Decree with the United States. Others have thus far chosen not to participate.

Pursuant to the Decree, the Group has agreed to perform, at considerable expense, the remedy set forth in EPA's ROD, including soil capping, groundwater extraction and treatment, and the excavation and off site disposal of soils, and to achieve the performance standards set forth in the ROD and the Decree. The Consent Decree also required the Group to construct a water supply replacement for nearby residents and perform water quality monitoring of Valley Creek. The Group also agreed to pay a portion of EPA's response costs incurred before entry of the Decree and to pay DEP past costs and future oversight and response costs.

To date, the Group has incurred more than \$ 760,000.00 in response costs. Most recently, the Group completed the alternate water supply and began the Remedial Design work for the Site. All told, EPA estimated in the ROD that the Remedial Action work will cost in excess of \$15.8 million. As EPA has selected a pump and treat remedy, the cost could be even higher. EPA's past costs for removal and remediation, as well as DEP's costs, and other charges the Group must incur to effect the remedy, increase the total site costs dramatically.

The Group has committed to cooperating with EPA by entering into the Decree. The Group is equally committed, however, to ensuring that all PRPs pay their fair share of the past and future Site costs. The Group would prefer to obtain cooperation from other PRPs by settlement. To that end, the Group cashed out several signatories to the Decree contemporaneous with entry of the Decree. It has also reached and/or entertained settlements with other parties.

The Group also has intervened in a recent lawsuit filed by the United States against Chemclene Corporation, Springdale Management Corp., W. Lloyd Balderston and Ruth

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Balderston, the owners/operators of the Site ("Owner/Operator Defendants"). In its lawsuit, filed under Section 107 of CERCLA, the government seeks recovery of response costs it did not recover in the de minimis settlement or the Decree. The Group has filed a complaint in intervention under CERCLA § 113 and state law seeking to recover from the Owner/Operator Defendants response costs which have been incurred and/or will be incurred by the Defense Group and its members. That litigation is pending.

Settlement Offer

The Group has a CERCLA claim against more than 130 entities, including your company, for the hazardous substances which Photofabrication Chem & Equip is responsible and were treated and/or disposed of at the Site. As you know, CERCLA imposes strict liability, subject only to limited statutory defenses. A list of those entities receiving this letter is attached as Appendix B.

The Group is providing Photofabrication Chem & Equip an opportunity to avoid litigation and to settle the Group's claim against your company for a payment of \$30,500.35 in exchange for appropriate mutual releases. We have based this offer on a cash-out formula of \$765.00 per "MPA" drum and \$9,250.00 per "FDA" drum. The terms "MPA" and "FDA" refer to different areas of the site. This cash-out offer also includes a payment of \$25,000.00 which the Group is demanding that every recipient of this letter pay in addition to a per drum payment. This payment of \$25,000.00 is to reimburse the Group for costs it has incurred because of your non-participation. Photofabrication Chem & Equip had the opportunity to settle earlier, but has refused any offer(s). Those PRPs who joined with the Group expended substantial costs for the activities outlined in this letter, and Photofabrication Chem & Equip has enjoyed the benefits of these activities without expending any effort.

We believe that this is a fair and reasonable payment given Photofabrication Chem & Equip's real liability for the releases and resulting response costs at the Site. Moreover, Photofabrication Chem & Equip received a notice letter from EPA regarding the Site, but chose not to participate in any settlement. Courts consider a party's cooperation with the government as one of the important criteria for apportioning responsibility among PRPs.

A form of settlement stating your intent to settle is attached to this correspondence as Appendix C. We encourage you to take advantage of this generous settlement offer by executing the attached settlement form and returning it to the undersigned as soon as possible. Upon receipt of this executed form, we will expeditiously transmit to you a Settlement Agreement for your review and signature. Please note that final settlement with Photofabrication Chem & Equip is contingent upon personal certification by the owner or an officer, as applicable, that Photofabrication Chem & Equip has completed appropriate due diligence to determine that it has no information or reason to believe there may be additional waste linking Photofabrication Chem & Equip to Chemclene, the Balderstons or the Site.

Information regarding your company's nexus to the site is attached to this letter. This information includes each of the transactions at the site attributable to you, including dates and

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quantities and types of wastes involved. The Group has prepared (and attached to this letter) a transaction report relating to Photofabrication Chem & Equip. Our records indicate Photofabrication Chem & Equip was involved in at least 6 transactions for which generator liability has attached. These transactions include drums of waste that may or may not have been attributed to Photofabrication Chem & Equip in EPA's own summaries. For purposes of settlement at this time, we will make claims according to the total number of drums EPA believes connects you to the Site. These records show that Photofabrication Chem & Equip is liable, as a generator, for 7.19 MPA drums and 0 FDA drums.

If you wish additional information regarding the Site, your company's involvement, or the bases for our offer, we invite you to an informational meeting to be held at the offices of Duane Morris & Heckscher LLP, at One Liberty Place in Philadelphia, Pennsylvania, at 10:00 am on May 2, 2001. Attached is a form indicating whether you plan on attending this informational meeting. If you plan to attend, please complete the form (Appendix D) and send it to the undersigned by no later than April 25, 2001.

We plan to complete settlements with those potentially responsible parties who are willing to settle within three weeks after the informational meeting. Thus, the settlement offer contained in this letter will remain in effect until May 31, 2001. However, if you do not settle within that time frame, the Group will withdraw its offer and pursue appropriate legal action against Photofabrication Chem & Equip and other non-settling PRPs.

The Group has already discounted its demands to your company as a PRP to encourage early settlement. If we are compelled to pursue time consuming and costly litigation, our settlement demands will, of course, increase.

We look forward to your response.

Very truly yours,



Mark A. Stevens

Liaison Counsel, Chemcene Site Defense Group

Enclosures

Chemcene Site Defense Group

Transaction Report

(Sorted By: Invoice Date)

April 12, 2001

Photofabrication Chem & Equip

PRP Type: Generator,

11/12/75	3896	5930	NA	Benzol, Methylene Chloride	Y	2.00	2.00	0.00	
11/12/75	3896	5930	NA	Methylene Chloride	Y	1.64	1.64	0.00	
11/11/80	2254	7842	NA	Triethylene Glycol	Y	1.00	1.00	0.00	
11/11/80	2254	7842	NA	Glacial Acetic Acid	Y	1.00	1.00	0.00	
11/11/80	2254	7842	NA	T-Amyl Alcohol	Y	0.55	0.55	0.00	
11/11/83	2254	7852	NA	Cresylic Acid					
Totals:						7.19	7.19	0.00	

04.18.2001 15:33

FROM PC&E FRAZER, PA.

Appendix A

Chemelenc Site Defense Group

Action Manufacturing Company
Alcoa Inc. fka Aluminum Company of
America
Armstrong World Industries, Inc.,
(Armstrong Cork Company)
Barker Pipe Fittings Co. (Penflex, Inc.)
Beckett Corporation
Bulova Technologies LLC, (Hamilton
Technology, Inc.)
Fischer & Porter Company, (Fischer &
Porter Co.; Andrews Glass
Company, Inc.)
General Electric Company, (RCA
Corporation)
General Motors Corporation
Hamilton Precision Metals, Inc.
Handy & Harman Tube Company
Hercules Incorporated (for Electronic
Display Systems, Inc. A/K/A
Hercules Aerospace Display
Systems, Inc. and B.F. Goodrich
Aerospace Display Systems, Inc.)
LaFrance Corp.
Lucent Technologies Inc. for itself and on
behalf of its predecessor AT&T
(Western Electric)
Moore Products Co.
Plymouth Tube Company
Reilly Plating Co., Inc.
Rex Heat Treat - Lansdale, Inc. (J.W. Rex
Company)
Sunroc Corporation
Syntex (U.S.A.), Inc. (Star Dental
Corporation; A.S. Koch Corp.;
Syntex Dental Products)
Unisys Corporation, (for Burroughs
Corporation)
VIZ Liquidation Trust (Viz Manufacturing)

Appendix CRSVP FOR INFORMATIONAL MEETING

This is to notify the Chemelene Site Defense Group that

_____ [Name] representing _____
[Company Name] will attend the informational meeting on May 2, 2001, at the offices of Duane, Morris & Heckscher, One Liberty Place (17th Street at Market Street), 42nd Floor, Philadelphia, Pennsylvania, regarding the Malvern TCE Superfund Site. This person is responding on behalf of claims regarding the involvement of Photofabrication Chem & Equip as a potentially responsible party at the Malvern TCE Superfund Site. Attendance at the meeting is for settlement purposes only and does not constitute acknowledgement of liability.

Name

Title

Date

Appendix DINTENT TO SETTLE

Photofabrication Chem & Equip agrees to settle claims asserted against it by the Chemcene Site Defense Group regarding alleged liability at the Malvern TCE Superfund Site for a payment of \$30,500.35.

Name

Title

Date

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END